No. 627

FEB
CHARLES

In the Supreme Court

OF THE

United States

.....Term, 1932

GEORGE P. PORTER, Auditor and ex officio Investment Commissioner of the State of Montana,

Appellant,

vs.

INVESTORS SYNDICATE, a corporation,

Appellee.

STATEMENT OF BASIS OF APPELLATE JURISDICTION

L. A. FOOT,
Attorney General of the State of Montana.
T. H. MacDONALD,
Assistant Attorney General of the State of Montana.

Attorneys for Appellant.

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Pursuant to Supreme Court Rule No. 12, paragraph 1, the appellant above named files this his statement showing the basis on which he contends that the Supreme Court has appellate jurisdiction

to review on appeal the injunction order and decree appealed from herein, as follows:

I. The statutes believed to sustain appellate jurisdiction are Sections 238 and 266 of the judicial code, as amended, (28 U. S. C. Sec. 345 (3) and 380).

II. The final decree and order of injunction appealed from were entered on the 20th day of August, 1931, as appears from page 68 of the certified transcript on appeal on file herein.

III. The application for appeal was presented on the 13th day of November, 1931, as appears from pages 70 and 77 of the certified transcript.

IV. The appeal herein is from a final decree and order of injunction (R. page 68) granted by a majority of two of a three judge statutory court (R. page 22) convening under the provisions of Section 266 of the judicial code as amended (28 U. S. C. 380) restraining the appellant auditor and ex officio investment commissioner of the State of Montana from carrying out the provisions of an order made by him in his official capacity as investment commissioner of the State of Montana, directing the appellee to conform to certain requirements with reference to its investment certificate as provided by Sections 4043, 4036 and 4045 of the Revised Codes of Montana of 1931. (See majority opinion R. page 51.) The injunction was granted on the following grounds, to-wit:

"That the guaranty of the Fourteenth Amendment (federal constitution) is challenged when an order is made by the commissioner (appellant) based upon the statute (aforesaid Montana statute) as amended, revoking a license or permit even with notice and hearing such revocation to be in effect pending the test of its validity by the court," (R. page 73) and that the acts threatened by the investment commission (appellant) would deprive the appellee of his property without due process of law as provided for in the Fourteenth Amendment to the federal constitution because the legislature set up no rule or standard to determine when a sufficient cause exists for the revocation of a certificate by the investment commissioner and no standard as to when a business is being conducted in an inequitable manner.

The opinion was written by Hon. Charles N. Pray, District Judge, concurred in by Sawtelle, Circuit Judge, dissented from by Bourquin, District Judge (R. page 84).

Application for interlocutory injunction was made, together with a request for a three judge court (R. page 22) but the matter was submitted to a three judge court for final decision (R. page 44). The matter was submitted on the Bill of Complaint (R. page 18), Answer thereto (R. page 24) and Stipulations as to the record (R. page 82).

Dated at Helena, Montana, this 20th day of January, 1932.

Respectfully submitted,

L. A. FOOT,

Attorney General of the State of Montana.

T. H. MacDONALD,

Assistant Attorney General of the State of Montana.

Attorneys for Appellant, residing at Helena, Montana.

J. C. FREEMAN,

Great Falls, Mont.

Service of a copy of the above statement is hereby admitted this.....day of January, 1932.

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Attorneys for Appellee, residing at.....